

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

OCT - 9 2003

The Honorable Cheri Pierson Yecke Commissioner of Education Minnesota Department of Education 1500 Highway 36 West Roseville, Minnesota 55113



Dear Commissioner Yecke:

I am writing to follow up on Secretary Paige's August 1, 2003, letter to you regarding Minnesota's compliance with Title I of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). As you know, we have had several conversations with you and your staff to try to resolve the issues related to Minnesota's non-compliance with Section 1111(b)(2)(C)(iv) of ESEA. After providing Minnesota with an appropriate opportunity, Minnesota was not able to "show cause" as to why the Department should not withhold ten percent of Minnesota's Title I, Part A administrative funds.

In April 2003, your staff communicated to us that Minnesota would not be using 2002-2003 school year assessment data as the primary determinant of adequate yearly progress (AYP) for the middle and high school levels. Instead, Minnesota used attendance rate data for middle schools and graduation rate data for high schools as the primary means for making AYP determinations for the 2002-2003 school year.

As you know, section 1111(b)(2)(C)(iv) of ESEA requires that a State's definition of AYP measure the progress of its schools based primarily on academic assessments. By not using academic assessments in reading/language arts and mathematics as the primary determinants of AYP for Minnesota's middle and high schools for the 2002-2003 school year, Minnesota is out of compliance with this requirement.

Because holding all schools and school districts accountable for making AYP is one of the fundamental principles of NCLB, we are exercising our authority under section 1111(g)(2) to withhold ten percent of Minnesota's Title I, Part A administrative funds for the 2002-2003 school year—\$112,964. The Department will also withhold ten percent of Minnesota's Title I, Part A administrative funds for each subsequent year until Minnesota, in accordance with section 1111(b)(2)(C)(iv) of ESEA, uses academic assessments as the primary determinants of AYP for Minnesota's middle and high schools. We have every reason to believe, however, that no further withholding will be necessary because Minnesota is currently undertaking efforts to ensure that middle and high school assessments administered in the 2003-2004 school year will be used as the primary determinants of AYP.

I appreciate your efforts to move forward with a strong State accountability plan that embraces the letter and spirit of the law and that will result in all students in Minnesota receiving a high

quality education. My staff and I look forward to working with Minnesota over the coming year.

Sincerely,

Ronald J. Tomalis

Acting Assistant Secretary



THE SECRETARY OF EDUCATION WASHINGTON, DC 20202

April 22, 2005

Honorable Shirley Neeley Commissioner of Education Texas Education Agency William B. Travis Building 1701 North Congress Avenue Austin, Texas 78701-1494

Dear Commissioner Neeley:

I am writing to follow up on former Secretary Paige's letter of January 19, 2005, in which he notified you of his intent to withhold four percent of Texas' fiscal year 2004 State administrative funds under Title I of the Elementary and Secondary Education Act (ESEA) for failing to provide schools and school districts timely assessment information and adequate yearly progress (AYP) decisions.

The Texas Education Agency (TEA) responded on February 10, 2005, in an effort to show cause why the Department should not withhold a portion of Texas' Title I administrative funds. TEA essentially identifies the U.S. Department of Education (ED) as the cause of TEA's failure to make timely AYP decisions. In support of its position, TEA cites the timing of the approval of amendments to the Texas Accountability Plan as well as the timing of publication of related ED policies and guidance. TEA also asserts that it believed, in good faith, that notifying schools of their AYP determinations by September 30 would be sufficient to meet the statute's requirement that schools be identified before school began, which, in Texas, occurred the week of August 16-20, 2004.

After careful consideration of TEA's submission, I have concluded that TEA has not shown cause why I should not withhold four percent of Texas' Title I State administrative funds for fiscal year 2004. In its response, TEA asserts that it could not make timely AYP determinations because ED did not respond, in a timely manner, to its amendment request or provide guidance on implementing the new regulations that permit a State to hold students with the most significant cognitive disabilities to alternate achievement standards and include their proficient scores in AYP decisions, subject to a 1.0 percent cap. ED's actions, however, did not cause TEA's late identifications.

For AYP decisions based on the 2003-04 assessments, TEA submitted an amendment to its accountability plan requesting permission to "hold harmless" schools and districts that did not make AYP because of the application of the 1.0 percent cap. The TBA's proposed amendment was not consistent with the law and the regulations and something

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ED could not approve. Our negotiations between April and July were an effort to find a mutually agreeable solution.

At no time during those discussions was TEA led to believe that its amendment would be approved as proposed, and KD staff made clear to TEA that including the proficient scores of all students who took the alternate assessment would not be allowable.

Moreover, I understand that Assistant Secretary Simon did not state that identifying schools for improvement by September 30 would be sufficient to avoid a withholding of State administrative funds.

Therefore, under section 1111(g)(2) of ESEA, I am withholding four percent of Texas' Title I State administrative funds for fiscal year 2004, which totals \$444,282. Under Texas' accountability plan, required by section 1111 of RSEA, TEA was required to provide decisions about AYP in time for schools to implement the required provisions of section 1116 before the beginning of the 2004-05 school year. TEA has not provided a sufficient justification for failing to do so.

I regret having to withhold a portion of Texas' Title I State administrative funds but I conclude that TEA's late identification of schools is a violation of the law for which TEA must be held accountable. I am heartened by TEA's recent commitment to ensure that this year's AYP decisions are timely. These actions will be important to the education of students in Texas so that no child is left behind.

Sincerely,

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